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IN THE  
SUPREME COURT OF THE  
UNITED STATES

OCTOBER TERM, 1944

No. 441

IDA GUSS, *Petitioner*,

v.

LILLIAN EASTON LASTRAP,

INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF  
LUCIUS JOSEPH LASTRAP, JR., DECEASED, ET AL..

*Respondent*

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for  
the Fifth Circuit

AND BRIEF IN SUPPORT THEREOF

BERNARD A. GOLDING,  
*Counsel for Petitioner*



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**PETITION FOR WRIT OF CERTIORARI**  
**To the United States Circuit Court of Appeals for**  
**the Fifth Circuit**

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**Statement of the Matter Involved**

The final judgment rendered in this cause<sup>1</sup> challenges the validity of the Presidential Order dated December 19, 1941, creating the Maritime War Emergency Board, the purpose being to expedite and coördinate the joint war efforts of the representatives of the Maritime Industry and the Labor Organizations involved. This is the first test of the validity of that law to reach this Court.

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<sup>1</sup> 142 Fed. (2d) 872.

The Order<sup>2</sup> provides for the designation of three individuals to serve as members with authority to draft Regulations and Decisions governing insurance upon the lives of Seamen who perish as a result of war hazards, while engaged in employment aboard United States flag vessels of the United States Merchant Marine. Material to this cause, this Board rendered three Decisions providing for payment of *insurance* in the sum of Five Thousand (\$5,000.00) Dollars, on all voyages, *to the beneficiary designated by the deceased Seaman* at the time he signs on the vessel, plus One Hundred and Fifty (\$150.00) Dollars for loss of personal effects.<sup>3</sup>

On April 10th, 1942, Lucius Joseph Lastrap, Jr., while a member of the crew aboard the SS "Gulf America" (a tanker owned and operated by Gulf Oil Corporation), perished on the high seas as a result of Warlike operations. When he signed aboard this vessel, he executed a card furnished him by the employer for the purpose of designating his beneficiary to his War Risk insurance funds in accordance with the Decision issued by the Maritime War Emergency Board, which Gulf Oil Corporation agreed to abide by. Deceased designated Petitioner, Ida Guss, his aunt, *as beneficiary, without restrictions*, to such insurance. This formed part of his employment contract aboard such vessel. At his death, he was

<sup>2</sup> Printed as an Appendix hereto. Cf. Fed. Register, Vol. 8, No. 56, p. 3385.

<sup>3</sup> "PAYEES: All payments provided for herein will be made only to the master, officer, or member of the crew concerned, that a payment for loss of life will be made to the beneficiary designated by the master, officer or member of the crew at the time he signs on. **The appearance of the name of such beneficiary upon a copy of the signed beneficiary list of individual beneficiary designation, attested by the shipowner, shall be conclusive evidence of such designation,**  
\* \* \*

"Payment hereunder, if made in accord with any of the foregoing provisions, shall thereby entirely discharge Assurer's liability with respect to such loss, injury or death." (Emphasis supplied.) (Supplement to Decision No. 1, Dated February 6, 1942.)

living with Petitioner and had contributed toward her support for many years.

The suit originated on a Bill of Interpleader by the employer, Gulf Oil Corporation, stating it had the sum of \$5,176.74, which it had deposited in the Registry of the Trial Court, and sought the Trial Court to determine which of these two parties was entitled to receive such proceeds.

Respondent, the estranged wife of deceased, sought recovery of such funds as administratrix of his estate.

Petitioner moved for recovery on the basis that she was designated *as beneficiary, without restrictions*, on the card furnished the seaman at the time he signed shipping articles aboard the vessel in question.

The Trial Court held that Petitioner was designated as the deceased's beneficiary, and awarded her the sum of \$5,150.00 (\$5,000.00 as insurance, and \$150.00 for loss of personal effects), *as trustee only*, denying recovery *in her individual capacity*, as intended by deceased seaman.

The Circuit Court specifically held that such money did *not* constitute insurance funds; that the payment of such money by Gulf Oil Corporation, as a result of the death of said Seaman, was "in the nature of a gift," and reversed the case with directions that the sum of \$5,150.00 be paid over to his heirs at law, contrary to the wish of deceased.

In this case, there are no controverted issues of fact. There is no doubt,

- (A) That deceased was a seaman;
- (B) That he lost his life aboard an American Tanker as a result of enemy action;
- (C) That he designated Petitioner as his beneficiary of the insurance proceeds and intended that she recover the same in her individual capacity.

The sole issue is whether deceased Seaman's expressed written intention that Petitioner shall recover such insurance funds in her individual capacity, may, by the Courts, be (a) translated into a recovery in the restricted capacity as trustee, only, as the District Judge did, (b) disregarded entirely by the Circuit Court.

### **Jurisdiction**

The Judgment of the Circuit Court of Appeals was entered on May 24th, 1944 (R. 218-222).

A petition for Rehearing was denied on June 22, 1944 (R. 232).

The jurisdiction of this Court is invoked under JUDICIAL CODE, Section 240(A), as amended by the act of February 13th, 1925, being Title 28, Section 347(A), U. S. CODE.

### **Questions Presented**

1. Does the Maritime War Emergency Board have the power and authority to make provisions for indemnity to American merchant seamen and their designated beneficiaries in the event they are injured or lose their lives as a result of enemy action?
2. Are such regulations legal and binding upon American shipowners as a matter of law?
3. Are these regulations binding upon the Gulf Oil Corporation by reason of its express agreement to be bound thereby?
4. The Gulf Oil Corporation having admitted liability in the sum of \$5,150.00 under and by virtue of the Rules and Regulations of the Maritime War Emergency Board, did the Circuit Court err in holding that these funds were not paid by



the Gulf Oil Corporation as indemnity for the loss of deceased's life as a result of enemy action?

5. Since the trial court on conflicting evidence—found that Card Exhibit L was regarded by the Gulf Oil Corporation as an individual beneficiary designation—

“and that at the time deceased signed on on the Steamship Gulf America he executed card (Exhibit L) and when he did so, he knew that he was giving directions with respect to the insurance on his life and his personal effects. He named Ida Guss his beneficiary.”

Did the Circuit Court have any jurisdiction to reverse this part of the trial court's finding amply *supported by the evidence?*

6. In view of the clear, direct and specific designation by the deceased of his Aunt, Ida Guss, *as his beneficiary* to the fund did the Circuit Court err in ordering said funds paid over to the heirs at law?

### **Presidential Order and Regulations Involved**

Presidential Order, dated December 19th, 1941; Maritime War Emergency Board Decisions and Regulations. They appear in the Appendix, page 15, et seq.

### **Reasons Relied on For the Allowance of the Writ**

1. The question involved in this case is one of Federal Laws which has not been, but should be, settled by this Court. Thousands of American Merchant Marine Seamen, and their designated beneficiaries, are subject to the provisions of the Presidential Order, dated December 19th, 1941, and the Rules and Regulations promulgated by the Maritime War Emergency Board, and the decision of the Circuit Court

of Appeals, if permitted to stand, leaves in confusion the proper application of the Decisions and Regulations rendered by the Maritime War Emergency Board, and a decision by this Court seems necessary to enable the Courts to properly administer the Regulations and Decisions promulgated under said Presidential Order, and to provide a rule of conduct for all persons subject to the Rules and Regulations in question.

2. Because the case involves a question of gravity and general importance which it is in the public interest to have decided by the Court of last resort. The question involved is far-reaching in its application and importance. The decision of the Circuit Court of Appeals affects many thousands of American Seamen and beneficiaries who are amenable to the Decisions, Rules and Regulations of the Maritime War Emergency Board.

3. Because the Decisions of the Maritime War Emergency Board in force between *December 7th, 1941*, and *March 15th, 1943*, permitted American Merchant Seamen to designate, as beneficiary, any person they saw fit to War Risk Insurance Funds. On *March 15th, 1943*, the Board changed its Regulation limiting designation of beneficiaries to persons within a certain class. The greatest number of lives lost in the American Merchant Marine, as a result of enemy action, occurred during the year 1942. As a result, there is, at the present time, a large number of claims pending, *similar to this*, in which designated beneficiaries seek to recover War Risk Insurance benefits as provided for by the rules of this Board, in force at that time (*April 10th, 1942*).

4. A review of the decisions of the Court below is of importance in the administration of the Presidential Order, and Rules, Regulations and Decisions of the Maritime War Emergency Board.

5. Because of the importance in the administration of justice of the problem raised.

6. Aside from the novelty and importance of the issues raised, the decision below should be reviewed because it is clearly erroneous and not in accord with the principles of applicable decisions of this Court.

### Prayer

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals for the Fifth Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and the proceedings of the Circuit Court of Appeals had in the case numbered and entitled on its docket 10832, Ida Guss, Appellant and Appellee, v. Lillian Easton Lastrap, Individually and as Administratrix of the Estate of Lucius Joseph Lastrap, Jr., Deceased, etc., et al., Appellees and Appellants, to the end that this cause may be reviewed and determined by this Court, as provided by the statutes of the United States; and that the judgment herein of said Circuit Court of Appeals be reversed by this Court; and for such further relief as this Court may deem proper.

BERNARD A. GOLDING,  
*Counsel for Petitioner*

Dated September \_\_\_\_\_, 1944.